

DEPARTMENT OF STATE REVENUE

02970132.LOF

LETTER OF FINDINGS NUMBER: 97-0132 ITC

Adjusted Gross Income Tax

For Tax Period: 1990 Through 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax – Individual Income

Authority: IC 6-3-2-1; IC 6-8.1-5-1

Taxpayers (Husband and Wife) protest the imposition of Indiana adjusted gross income tax on income not previously reported on their state tax returns.

STATEMENT OF FACTS

Taxpayer (Wife) was investigated and criminally prosecuted for theft of funds from her former employer. Taxpayer was assessed adjusted gross income tax on income found to have been received while in taxpayer's position but not reported on federal or state income tax returns. Taxpayers protested this assessment. Additional facts will be presented below, as necessary.

I. Adjusted Gross Income Tax – Individual Income

DISCUSSION

Pursuant to IC 6-3-2-1, "each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person..."

Pursuant to an investigation by the Department's Criminal Investigative Division, taxpayer was found to have under-reported her adjusted gross income throughout the assessment period. The Department's investigation determined taxpayer received additional income from her former employer. This investigation took into consideration the fact that taxpayer was criminally investigated and prosecuted for forgery and theft from her former employer. According to the findings of the Department, the taxpayers were assessed additional adjusted gross income tax.

IC 6-8.1-5-1 states in part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1(b).

Taxpayers protested this assessment but offered no evidence in support of their protest except a letter, dated December 20, 1993, from the District Director of the Internal Revenue Service. In this letter, it is stated no changes were made to the tax reported by the taxpayers for years 1990 and 1991. The Department does not accept this as evidence supporting taxpayers' protest as the letter was written prior to the criminal and civil investigations into their receipt of additional income.

Taxpayers have requested the Department postpone any final determination of the protest until all criminal appeals processes have been exhausted. However, the taxpayers offer no basis for abating the tax due regardless of the final determination of the criminal courts. The Department declines to postpone its resolution of this protest.

FINDING

Taxpayers' protest is denied. Taxpayers have failed to rebut the validity of the adjusted gross income tax assessment.